Fair Use Analysis Checklist

Use this checklist to help analyze whether a use of a copyrighted work could be a fair use.

**Remember:** No single item or factor is determinative of fair use

Find the annotated version of this checklist and the PDF at http://copyright.psu.edu/checklist!

Name: 
Date: 
Class or Project: 
Course and Term: 
Title of Copyrighted Work: 
Author and Publisher: 
Portion(s) to be used (e.g., pages, timer counts):

**Factor 1: Purpose and Character of the Use**

FAVORS FAIR USE
- [ ] Nonprofit Educational Institution
- [ ] Teaching (including multiple copies for classroom use)
- [ ] Research or Scholarship
- [ ] Criticism, Comment, News Reporting, or Parody
- [ ] Transformative (use changes work for new utility or purpose)
- [ ] Personal Study

FAVORS FAIR USE
- [ ] Factor Weighs in Favor of Fair Use
- [ ] Factor Weighs Against Fair Use

**Factor 2: Nature of Copyrighted Work**

FAVORS FAIR USE
- [ ] Factual or nonfiction work
- [ ] Important to educational objectives

FAVORS FAIR USE
- [ ] Factor Weighs in Favor of Fair Use
- [ ] Factor Weighs Against Fair Use

**Factor 2: Nature of Copyrighted Work**

OOPPOSES FAIR USE
- [ ] Commercial activity
- [ ] Profiting from the use
- [ ] Entertainment
- [ ] Non-transformative
- [ ] For publication or public distribution
- [ ] Bad-faith behavior
- [ ] Failure to provide appropriate credit to original author

OOPPOSES FAIR USE
- [ ] Unpublished work
- [ ] Highly creative work (art, music, novels, films, plays, fiction, poetry)

OOPPOSES FAIR USE
- [ ] Factor Weighs in Favor of Fair Use
- [ ] Factor Weighs Against Fair Use
Factor 3: Amount and Substantiality of Portion Used

FAVORS FAIR USE
- Small portion of work used
- Portion used is not central or significant to entire work as a whole
- Amount is tailored to acceptable purpose

OPPOSES FAIR USE
- Large portion or entire work used
- Portion used is central to work or “heart of the work”
- Amount taken is more than is necessary

Factor Weighs in Favor of Fair Use  Factor Weighs Against Fair Use

Factor 4: Effect on Market for Original Work

FAVORS FAIR USE
- No significant effect on the market on actual or potential market for copyrighted work
- Use stimulates market for original work
- One or few copies made
- No similar product marketed by the copyright holder
- Lack of licensing mechanism or out of print copy of original work
- Restricted Access
- Supplemental Reading

OPPOSES FAIR USE
- Significantly impairs market or potential market for copyrighted work or derivative
- Reasonably available and affordable licensing mechanism for use of the copyrighted work
- Numerous copies made
- Repeated and/or long-term use that could diminish market for original work
- Could replace sale of copyrighted work
- Unrestricted access online or by other means
- Required Reading

Factor Weighs in Favor of Fair Use  Factor Weighs Against Fair Use

Fair Use Analysis
- Based on the fair use analysis and weighing all the factors together, the use of the copyrighted material falls within the fair use exception.
- Based on the fair use analysis and weighing all the factors together, the use of the copyrighted material does not fit within the fair use exception. Permission should be obtained.

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